

E-FILED 4/26/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSEPH PADGETT AND DARLA
PADGETT,

Plaintiffs,

v.

CITY OF MONTE SERENO, ET AL.,

Defendants.

NO. 5:04-cv-3946 JW (RS)

**ORDER DIRECTING LISA RICE
TO APPEAR AND SHOW CAUSE
WHY SHE SHOULD NOT BE
HELD IN CONTEMPT**

On March 22, 2006, the Court issued an order granting a motion to compel brought by plaintiffs. That order provided, in relevant part,

With respect to the questions posed by the Padgetts to Rice, no objection was made on the basis of privilege. Instead, Rice appeared for her deposition without counsel and proceeded to answer all questions, with the exception of several concerning her present living and employment situation, as well as some additional questions seeking to elicit personal information. Claiming these to be "irrelevant" to the Padgetts' claims, she refused to answer. Relevancy, however, is not a proper objection to raise in response to a deposition question. International Union of Elec., Radio & Machinery Workers, AFL-CIO v. Westinghouse Elec. Corp., 91 F.R.D. 277, 278 (D.D.C. 1981) (deponent must answer question even if it calls for irrelevant information). An attorney may only instruct a deponent not to answer in order to preserve a privilege, enforce a discovery limitation previously ordered by the court, or adjourn the deposition to seek a court order limiting further examination. Fed. R. Civ. P. 30(d)(1). Accordingly, the motion to compel Rice to answer further deposition questions is granted. As noted by the Court at the hearing on this motion, however, only foundational questions concerning any mental and emotional treatment Rice may have received will be permitted.

1 The Court is advised that plaintiffs' counsel's subsequent attempts to communicate
2 with Rice to arrange for her to appear for deposition have gone unanswered, and that Rice
3 has failed and refused to appear for deposition.

4 Accordingly, LISA RICE IS HEREBY ORDERED to appear in Courtroom 4 of the
5 United States District Court, 280 South First Street, San Jose, California 95113, on May 17,
6 2006, at 9:30 a.m., to show cause why she should not be held in contempt for failure to
7 comply with the Court's prior order.

8 Plaintiff's counsel shall cause a copy of this order to be served on Lisa Rice by mail
9 at her address of record, shall make reasonable efforts to serve her personally with a copy,
10 and shall do so forthwith .

11
12
13 IT IS SO ORDERED.

14 Dated: April 26, 2006


RICHARD SEEBORG
United States Magistrate Judge

THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN DELIVERED TO:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.

Dated: April 26, 2006

Chambers of Judge Richard Seeborg

By: /s/ BAK